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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ERIKA S., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

CLAUDIA M.,

Defendant and Appellant.

D053299

(Super. Ct. No. SJ11211F)

APPEAL from a judgment of the Superior Court of San Diego County, Ronald L.
Johnson, Judge. Affirmed.

Claudia M. appeals the judgment terminating her parental rights to Erika S.
Claudia contends the juvenile court erred by declining to apply the beneficial relationship
and sibling relationship exceptions to termination of parental rights (Welf. & Inst. Code,

§ 366.26, subds. (c)(1)(B)(i), (v)).¹ We determine the contentions to be without merit and affirm.

PROCEDURAL AND FACTUAL BACKGROUND

Erika was born in January 2001. In November and December 2003 and in March 2006 she was exposed to violent confrontations at home between Claudia and her boyfriend, Mario I. In April Mario was found hiding in a closet after Claudia denied letting him back in the home. Marijuana and drug paraphernalia were found within Erika's reach.

In April 2006 the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for then five-year-old Erika based on the above facts. Erika was detained at Polinsky Children's Center for two days. She was then moved to a foster home with her half sisters, 10-year-old Isabel A. and nine-year-old Claudia M. (little Claudia). The foster home later became a placement for all three girls. Erika's half brothers, 13-year-old Armando A., 12-year-old Jose A., and 11-year-old Daniel A. were detained in a different foster home.²

In May 2006 the court made a true finding on the petition. At the July 2007 12-month review hearing, it terminated reunification services and set a section 366.26 hearing for November. The day after the 12-month review hearing, Erika was moved to a

¹ All further statutory references are to the Welfare and Institutions Code.

² Erika has a different father than her half siblings. The siblings' father is Armando A. (Armando Sr.).

new foster home with her sisters. In late October 2007 the three brothers were moved to the home of their father, Armando Sr., in Mexico. In late November Isabel and little Claudia followed.³

In November 2007 the court set a contested section 366.26 hearing for February 2008. The hearing was continued several times and took place in June. The court then terminated Claudia's parental rights to Erika.

Claudia appeals.

I.

The Court Did Not Err by Failing to Apply the Beneficial Relationship Exception to Termination of Parental Rights

Section 366.26, subdivision (c)(1) allows termination of parental rights upon a showing, by clear and convincing evidence, of adoptability. An exception exists if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship" with the parents. (§ 366.26, subd. (c)(1)(B)(i).) A beneficial relationship is one that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The existence of this relationship is determined by "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs. . . ." (*Id.* at p. 576.)

³ Armando Sr. is the father of all of Erika's half siblings. Because he is not Erika's father and he has substantial criminal and child welfare histories, it was not possible to place Erika with him.

Examining the evidence in the light most favorable to the judgment, we conclude that although Claudia maintained regular visitation and contact with Erika, she failed to meet her burden of establishing the beneficial relationship exception to termination of parental rights. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 576-577; *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373.)

At the time of the section 366.26 hearing, Erika was seven years old. She had been out of Claudia's custody for a total of more than three years, including a year in a previous dependency case⁴ and more than two years in this case. Claudia had unsupervised visits for only about four months, from December 2006 to April 2007. Supervision resumed after the Agency discovered that Claudia was still living with Mario and drinking during visits. Claudia asked for extra visitation only a few times and did not take advantage of the fact that she was allowed to telephone Erika every day. While Erika loved Claudia, enjoyed their weekly hour long visits, and visitation was generally positive, Claudia was sometimes inattentive and Erika usually did not show distress when visits ended.

Erika had lived with her current foster parents for nearly 11 months and they wished to adopt her. They provided a loving, stable, safe environment. Erika was becoming attached to them and said she wanted to stay with them. Erika also said that she would miss Claudia if they did not see each other and once or twice said that she

⁴ It is unclear from the record whether this occurred from 2003 to 2004 or from 2004 to 2005. The reasons for the previous dependency were the same as the reasons for the instant dependency: drugs and drug paraphernalia within the children's reach and domestic violence between Claudia and Mario.

wanted to live with Claudia and did not want to be adopted. She was happy and thriving in the foster home, however, which the social worker believed to be a better indicator of her well-being than her verbalization.

Claudia relies on *In re S.B.* (2008) 164 Cal.App.4th 289 , in which this court concluded the juvenile court erred by declining to apply the beneficial relationship exception. (*Id.* at p. 301.) That case is distinguishable. There, the appellant father "complied with 'every aspect' of his case plan." (*Id.* at p. 298.) He visited three times a week and the child "became upset when the visits ended and wanted to leave with [him]." (*Id.* at p. 294.) These factors were not present here. The court did not err by declining to apply the beneficial relationship exception.

II.

The Court Did Not Err by Failing to Apply the Sibling Relationship Exception to Termination of Parental Rights

Section 366.26, subdivision (c)(1)(B)(v) provides an exception to termination of parental rights if termination would substantially interfere with the child's sibling relationship and the severance of the relationship would be so detrimental to the child as to outweigh the benefits of adoption. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 951-953; § 366.26, subd. (c)(1)(B)(v).) The juvenile court must "balance the beneficial interest of the child in maintaining the sibling relationship, which might leave the child in a tenuous guardianship or foster home placement, against the sense of security and belonging adoption and a new home would confer." (*In re L. Y. L.*, *supra*, at p. 951, citing *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Factors to be considered

include whether the siblings were raised in the same home; whether they shared significant common experiences or have existing close and strong bonds; and whether ongoing contact is in the child's best interests, including her long-term emotional interest as compared to the benefit of adoption. (§ 366.26, subd. (c)(1)(B)(v).)

Examining the evidence in the light most favorable to the judgment, we conclude that substantial evidence supports the juvenile court's finding that Claudia did not meet her burden of proving the sibling relationship exception. (*In re L. Y. L., supra*, 101 Cal.App.4th at pp. 947, 952.)

First, there was no evidence that termination of parental rights would substantially interfere with the sibling relationship. That relationship had already become minimal. Communication between Erika's foster parents and Armando Sr. was strained. Armando Sr. did not facilitate sibling visitation and there were only two or three visits after the siblings were moved to his home. At the time of the section 366.26 hearing, Erika had not seen her siblings for approximately four months. They did not call her, even on her birthday, and she called them only a few times. Although Erika did once or twice say that she wanted to live with her siblings, she did not show distress at the close of sibling visits and did not ask for more visits.

Second, severance of the sibling relationship would not be so detrimental to Erika as to outweigh the benefits of adoption. Prior to her dependency, Erika had lived with her siblings for the majority of her life. They shared significant common experiences and had a bond. By the time of the section 366.26 hearing, however, Erika had not lived with her brothers for more than two years and with her sisters for seven months. Although

Erika said the lack of contact made her sad, she was thriving in her foster home, exhibited no behavioral problems after her siblings were moved to Mexico, and had formed a bond with her foster siblings. Erika's therapist characterized her as resilient and believed that her current high functioning—despite the paucity of sibling contact—was the best predictor of her future well-being.

The court did not err by declining to apply the sibling relationship exception.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

MCDONALD, Acting P. J.

AARON, J.